IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3966 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAMDHAN RAMKUMAR PAREEK
Versus
UNION OF INDIA

Appearance:
MR PARESH M DAVE for Petitioner No. 1
MR ASIM J PANDYA for Respondent No. 1-3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 27/09/2001

ORAL JUDGEMENT
(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. The petitioner is a Director of the Company M/s.Anjani Synthetics Limited. By this petition, directions are sought against the Union of India and its authorities exercising powers under the Central Excise Act, 1944 (respondents No. 2 & 3), to forthwith issue final Certificate in Form-3 under the Kar Vivad Samadhan Scheme (hereinafter referred to as "KVSS") towards full and final settlement of the petitioner's tax arrears arising out of Order-in-Original No.26/Addl.Commr/AHD-I/98 dated 26.2.1998 passed by the Additional Commissioner of Central Excise. Prayer is also made for quashing the order Annexure-D to this petition dated 13.9.2000 whereby, the petitioner's Appeal before the Commissioner of Appeals, Central Excise & Customs, Ahmedabad, has been dismissed only on the ground of non payment of requisite pre-deposit.

#. The only facts required to be stated are that to avail the benefit under KVSS, the petitioner, towards his liability, paid 50% of the tax arrears and sought exemption from payment of the remaining amount of penalty demanded. On behalf of the Department, it is stated that the Certificate has been withheld as it is disclosed that the payment has been made by the Company and not by the petitioner as a Director himself.

#. The learned counsel appearing for the Department placed before us, a query raised by the Commissioner of Central Excise and Customs, Ahmedabad-I, in his letter dated 4.6.99 addressed to Shri P.N.Malhotra, Member, C.B.E.C., Department of Revenue, North Block, New Delhi. The query made in this letter was whether the payment made by the Company on behalf of the Director can be accepted, for issuance of necessary Certificate under the prescribed Form, under the KVSS. A copy of the order in reply to the aforesaid query received by the Commissioner of Central Excise & Customs, Ahmedabad-I, dated 18.6.2001, has also been placed on record. The relevant portion thereof reads as under:

> I am directed to refer to your letter No.IB/16-5/KVSS/Misc/98-99 dated 4th June, 1999, and the subsequent reminders on the subject mentioned above, and to say that the Ministry of Law, who were consulted in the matter, have opined that the company cannot be made liable for the payment of any penalty in respect of any wrong done by its Directors or employees. The liability of the said Directors/ employees shall be their personal liability, liable to be discharged by them.

2. Further necessary action may be taken accordingly.

3. This issues with the approval of Joint Secretary (Legal) CBEC.

Yours faithfully,

sd/- Rajesh Chandra

(Rajesh Chandra)
Under Secretary (CX.8A)
C.B.E.C.

Relying on this internal correspondence which rests between the Commission, Central Excise & Customs, Ahmedabad, and the Member of the Central Board of Excise & Customs, New Delhi, it is submitted that since the liability towards penalty was of the Director personally, payment made by the Company cannot qualify for issuance of Certificate under the KVSS.

#. During the course of hearing, our attention was invited to Rule 221 of the Central Excise Rules, 1944, which reads as under:

Rule 221. Responsibility of a corporate body for making declaration and obtaining registration Certificate --

(1) Where any trade or business in respect of which declaration is required to be made by these rules, is carried on by a corporation, the declaration shall be under the seal of the corporation and signed by the chairman or some director of the corporation or by its secretary or other principal officer.

(2) Any person signing a declaration, and also the corporation under whose seal the declaration is made, shall be liable for the payment of all duties charged and to all penalties and confiscations incurred, in respect of the trade or business to which the declaration relates.

(3) A declaration in respect of a trade or business carried on by a corporation

shall be treated as being under the seal of the corporation if it is signed by some person authorised in that behalf by the corporation under its seal.

#. After hearing the learned counsel for the parties and particularly, considering the stand taken by the Department, we are of the opinion that whether the liability is personally of the Director or of the Company is a matter inter-se between the Company and its Director. So far as payment to be made under KVSS is concerned, once amount as required by the scheme has been paid, it is not open to the Department to withhold Certificate under the prescribed form under this scheme by taking shelter under some internal correspondence made between the Commissioner of Central Excise & Customs and the Member of the Central Board of Central Excise & Customs. Rule 221 quoted above makes it clear that declaration, if any required under the law, has to be made by the Company, and the liability would be of the person signing such declaration. This internal matter between the Company and its Director cannot be taken to be a ground by the Department to withhold the Certificate under the KVSS. In our considered opinion, the stand taken by the Department is wholly unwarranted and not supported by any provisions of law or scheme. Consequently, this petition succeeds and the same is allowed. The respondents are directed to forthwith issue the final Certificate in Form-3 under KVSS for full and final settlement of petitioner's case arising out of the Order-in-Original No.26/Addl.Commr/AHD-I/98 dated 26.2.1998 of the Additional Commissioner of Central Excise. Consequently, the order Annexure-D to this petition dated 13.9.2000 under which the petitioner's Appeal before the Commissioner of Appeals, Central Excise & Customs, Ahmedabad, was dismissed on the ground of non payment of requisite pre-deposit, is also quashed and set aside, since the benefit of KVSS is liable to be extended to the petitioner. The respondents are directed to pay Rs.500/= to the petitioner by way of costs of this petition. Rule is made absolute in aforesaid terms.

(D.M.Dharmadhikari, C.J.)

(Ravi R.Tripathi, J.)

(sunil)